

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA]	
]	
v.]	Cr. No. 19-cr-142-LM
]	
NATHAN CRAIGUE]	

MOTION IN LIMINE #2

The defendant, Nathan Craigue, by and through his counsel, moves *in limine* for an order precluding the government from introducing at trial:

- (a) The extent of Kenneth McKenna's injuries at the worksite and resulting death;
- (b) Chris Erickson's or Nicholas Ford's employment status;
- (c) Evidence that Chris Erickson sustained injuries while working with Craigue & Sons;
- (d) Evidence that McKenna, Ford, or Erickson were paid "under the table";
- (e) Evidence that OSHA or NH DOL issued violations or judgments against Craigue or that they made a determination that McKenna was an employee;
- (f) Evidence that Craigue's work equipment was unsafe or faulty or that the worksite was unsafe
- (g) Hearsay and other inadmissible evidence contained in Craigue's recorded statement to OSHA.

In support of this Motion, it is stated:

OFFENSE

Mr. Craigue has been charged with two counts of violating 18 U.S.C. § 1001(a)(2), which makes it a crime to knowingly and willfully make any materially false, fictitious, or fraudulent

statement or representation in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States. Specifically, the government must prove beyond a reasonable doubt that Craigie knowingly and willfully made a materially false statement when he told OSHA that Kenneth McKenna was a subcontractor and not an employee.

FACTS

At the time of the alleged offense, Craigie was the owner and operator of Craigie & Sons Home Exteriors. In the summer of 2018, Craigie was contracted to do exterior work on a building located in Concord. Craigie tasked two individuals, Kenneth McKenna and Nicholas Ford, with the project. On August 28, McKenna had an accident at the jobsite and suffered a fatal injury. Compliance Safety and Health Officer Scott Kelly, an investigator from OSHA, investigated the accident.

Kelly interviewed a number of witnesses, including Ford and Craigie. Ford explained he was getting paid by the job and would get a check once the project was over. Ford made a subsequent statement to OSHA, claiming that he was actually paid by the hour “under the table.”

On August 30, 2018, Chris Erickson sent an email to OSHA, reporting that he had worked for Craigie & Sons Home Exteriors, and about a month prior had fallen off a ladder, fracturing his hip. Erickson further explained that McKenna had been his roommate and both had worked for Craigie. OSHA interviewed Erickson, who stated that he was not a subcontractor, was paid by the hour, and worked about 4 to 5 roofing jobs a year for Craigie.

After conducting interviews of Craigie, both OSHA and the NH Department of Labor found that he had violated various agency rules. The NH Department of Labor issued a decision seeking penalties in the amount of \$39,000 and \$54,700 for various violations, including failure

to provide workers' compensation coverage and failure to keep true and accurate records of hours worked by two employees. The U.S. Department of Labor, OSHA, issued citations and notification of penalty to Craigue for violating safety and health regulations.

LAW AND ARGUMENT

Relevant evidence is evidence that “has any tendency to make a fact more or less probable than it would be without the evidence; and . . . is of consequence in determining the action.” Fed. R. Evid. 401. Under Rule 402, “[i]rrelevant evidence is not admissible.” Relevant evidence may not be admitted if its probative value is substantially outweighed by the danger of unfair prejudice. Fed. R. Evid. 403. “Rule 403 requires a balancing of probative value and prejudicial effect. When assessing the probative value of the evidence under Rule 403, a court must consider both whether the evidence that has been offered to prove an issue that is in genuine dispute, and whether the evidentiary point can be made with other evidence that does not present a risk of unfair prejudice.” *United States v. Henry*, 848 F.3d 1, 9 (1st Cir. 2017).

Federal Rule of Evidence 404(b) “prohibits the admission of prior bad acts to establish an individual’s character or propensity to commit a crime.” *United States v. Landry*, 631 F.3d 597, 601 (1st Cir. 2011). Prior bad acts may be admissible “for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” *Id.*; Fed R. Evid. 404(b). The First Circuit employs a two-part test to determine admissibility. “First, [the Court] must determine whether the evidence has ‘special’ relevance other than establishing propensity . . . Second, the court must consider whether Rule 403 requires

exclusion of the evidence because the danger of unfair prejudice substantially outweighs the probative value.” *Landry*, 631 F.3d at 602.

(a) The Extent of Kenneth McKenna’s Injuries and His Death

The government may seek to introduce evidence that McKenna suffered a fatal injury at the worksite on August 28, 2018. While an accident at the worksite is relevant to explain why OSHA initiated its investigation of Craigue & Sons, evidence of the severity of McKenna’s injury or that McKenna died as a result of that accident is not relevant and would not serve to prove an issue in actual dispute. First, whether he died as a result of the accident has no bearing on any element of the charged offense, and therefore is not relevant evidence. Fed..R. Evid. 401 and 402. Second, the jury may blame Craigue’s action or inaction for the death, which would unfairly prejudice Craigue and suggest he is of poor character. This evidence should be excluded pursuant to Rules 401, 403 and 404(b). Even if the court determines that the evidence has some “special” relevance, the court must nevertheless exclude it because the probative value is substantially outweighed by the danger of unfair prejudice to the defendant. Fed. R. Evid. 403. Here, the jury is tasked with a singular job – to determine if Craigue made a false statement concerning McKenna’s work status. Because the potential for the jury to focus on the tragic death of McKenna or the severity of his injuries as opposed to the elements of the charged offense of false statement is extremely high, the evidence should not be admitted.

(b) Chris Erickson’s and Nicholas Ford’s Employment Status

The allegations in the two-count indictment against Craigue relate to McKenna’s employment status. The question for the jury is whether McKenna was in fact an employee and not a subcontractor and whether Craigue lied about it. Testimony concerning other workers and

their employment status at Craigie & Sons is not relevant to that issue. *See* Fed. R. Evid. 401 and 402. While Erickson or Ford may claim that they had a specific work arrangement with Craigie, that relationship has no bearing on the jury's determination of McKenna's employment status with Craigie. Their work status would serve only to confuse the jury and would pose an unfair risk that the jury would assume that Craigie treated McKenna the same as Erickson and/or Ford. *See* Fed. R. Evid. 401-403.

Additionally, for the reasons articulated in Craigie's *Motion in Limine #1*, Ford and Erickson should be precluded from offering opinion testimony concerning their own work status. Application of the legal standards as to employee or independent contractor to their status is a matter of the jury applying the law, as instructed by the Court, to the facts as the jury finds them. Allowing Ford and Erickson to provide their own legal conclusion as to their employment status would run afoul of Fed. R. Evid 701.

Erickson's Injury

The government may seek to introduce evidence that Erickson was injured at the same worksite approximately one month prior to McKenna's accident. The issue for the jury is whether Craigie lied when he stated *McKenna* was a subcontractor and not an employee. Erickson's injury is not relevant to the charged offense. *See* Fed. R. Evid 401-402. Specifically, when Kelly questioned Craigie at the worksite, it was in response to McKenna's accident. This prior conduct would serve only as propensity evidence. Because the jury would hear that Craigie's worksite resulted in two significant injuries within a month's time, it is highly likely that such evidence would inflame the passions of the jury, leading them to focus on those

prejudicial facts, rather than the charged offense. This evidence should be excluded pursuant to Rule 401 to 404(b).

(d)(e)(f) Bad acts and violations

The Court should preclude the government from introducing evidence that Craigue did not pay taxes (paying “under the table”)¹, that he provided an unsafe work environment, or that OSHA and the NH Department of Labor found Craigue violated certain labor laws and safety regulations. In this case, Craigue was investigated by two separate agencies. He participated in a hearing before the NH Department of Labor and a recorded interview by OSHA, lasting .approximately one hour and twenty-three minutes. While some of the questions during the OSHA interview were specific to identifying employment status, much of the interview focused on numerous safety hazards at the worksite at issue in this case, injuries at other worksites, and discussions about how Craigue might have prevented the outcome of the case - the death of McKenna.

These facts are not relevant to the charged offense, and should be excluded pursuant to Rule 401 and 402. If the court determines that the evidence has some “special” relevance, the court must nevertheless exclude it because the probative value is substantially outweighed by the danger of unfair prejudice to the defendant. Fed. R. Evid. 403. There is a substantial risk that jurors could infer that the prior misconduct demonstrates a criminal propensity, making it more likely that Craigue committed the instant offense. In particular, the jury would likely be

¹ As to how McKenna was paid, this evidence may be relevant to determining his employment status.

influenced by factual or legal findings made by NH DOL or OSHA as to Craigie's culpability or McKenna's worker status. This evidence must be excluded. Fed. R. Evid. 401-04.

(g) Hearsay and Other Inadmissible Evidence from the OSHA Recording

On October 24, 2018 OSHA Agent Kelly questioned Craigie for over an hour about the management of his business. *See* Attached Transcript (bate stamped 19R48_OSHA-01019-1091). This exchange included numerous topics that are irrelevant and unfairly prejudicial. For example, Craigie explained that he took over the business when his father fell off a roof and suffered a debilitating injury and Agent Kelly responded by asking if his father had any fall protection equipment. OSHA-01021-22. Agent Kelly also asked Craigie about the company's safety protocols, unsafe equipment, and various injuries that had occurred at his worksites. *See* OSHA-01029-1031 (safety equipment and training); OSHA-01048- 59 (questioning about the hazards of the Concord job site and lack of fall protection); OSHA 01059-69 (questioning about Erickson's injury at worksite and what changes Craigie made to worksite after accident). Throughout the interview, Agent Kelly made conclusory statements when he identified Craigie's workers as employees – a matter to be decided by the jury. Agent Kelly also referenced and conveyed numerous hearsay statements. *See* OSHA -01033-36 (referring to findings of NH Department of Labor hearing); OSHA 1077 (Kelly stated to Craigie that witnesses saw McKenna running up and down the roof without fall protection). If the government intends to introduce the recording at trial, those portions that are irrelevant, unduly prejudicial and hearsay must be redacted by the government.

WHEREFORE, Craigie respectfully requests that this Honorable Court grant this

Motion and preclude the government from introducing any evidence referenced in (a) to (g).

A hearing is requested.

Respectfully submitted,

Date: October 21, 2020

/s/ Dorothy E. Graham

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CERTIFICATE OF SERVICE

I hereby certify that the above document was served on the following person on October 21, 2020 and in the manner specified herein: electronically served through CM/ECF to AUSA John Davis and AUSA Anna Dronzek.

/s/Dorothy E. Graham

Dorothy E. Graham

TRANSCRIPT

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October 24, 2018

MR. KELLY: So I asked about recording this interview and Mr. Craigie said it was fine with him; is that true?

MR. CRAIGUE: Correct.

R. KELLY: So today's date is October 24, 2018. The time is exactly a quarter after 10:00 a.m. Like I said, he writes better than I do. What is your actual full legal name?

MR. CRAIGUE: Nathan Joseph Craigie.

MR. KELLY: Okay. All right. And what is your physical address?

MR. CRAIGUE: It's 41 South Street, Unit 4, Concord, New Hampshire, 03301.

MR. GARDNER: All right. Okay, we can continue.

MR. KELLY: So what about the contacts? What other contacts do you have besides just a number? Do you have like a private e-mail or work e-mail?

R. CRAIGUE: [REDACTED] My cell phone and craigue@yahoo.

MR. KELLY: Can you give me the number then? What's the phone number?

MR. CRAIGUE: Oh, [REDACTED]

MR. GARDNER: Okay. And then you said the e-mail was craigue?

1 MR. CRAIGUE: Yeah, my last name, [REDACTED]

3 MR. KELLY: So what is the legal name of the company? Is
4 it still registered with the State of New Hampshire?

5 MR. CRAIGUE: Craigue and Sons Home Exteriors, LLC.

6 MR. KELLY: Okay. Is it still registered, or do you know
7 that?

8 MR. CRAIGUE: I do not know that.

9 MR. KELLY: Okay. What about -- you've got like a business
10 ID number --

11 MR. CRAIGUE: I do have a federal --

12 MR. KELLY: Do you know the number right off hand?

13 MR. CRAIGUE: I do not.

14 MR. KELLY: Okay.

15 MR. CRAIGUE: No.

16 MR. KELLY: So if you get a chance, you could e-mail me
17 something. I'll give you my business card, you can do that.
18 The tax ID number?

19 MR. CRAIGUE: That's the same thing, I believe.

20 MR. KELLY: Would it be the same thing as your business?
21 Okay.

22 MR. CRAIGUE: Yes.

23 MR. KELLY: Okay. So what is your physical address of the
24 company?

25 MR. CRAIGUE: There is no physical -- where I live.

1 MR. KELLY: That would be where you live?

2 MR. CRAIGUE: Yeah.

3 MR. KELLY: Okay. And do you know if it's -- if the
4 company is registered with that address on it or do you know?

5 MR. CRAIGUE: I would -- I have not done paperwork to
6 change the address so.

7 MR. KELLY: Okay.

8 MR. CRAIGUE: I work out of a trailer. So it goes where I
9 go.

10 MR. KELLY: Okay. And who is the actual legal owners or
11 owner of your company? Who would that be?

12 MR. CRAIGUE: Myself.

13 MR. KELLY: Just yourself, no one else?

14 MR. CRAIGUE: No.

15 MR. KELLY: Okay. How long has the company been in
16 business and who started it?

17 MR. CRAIGUE: I've been -- I took over for the business in
18 '02, I believe. And before that it was my dad's business. And
19 I'm not quite sure -- it was the mid '80s when he started. I
20 took over for him in '02 after he got hurt.

21 MR. KELLY: You said your dad started in '80 something?

22 MR. CRAIGUE: Mid '80s. I'm not quite sure the exact year.

23 MR. KELLY: Okay. And I know you'd mentioned he got hurt?
24 So what exactly happened?

25 MR. CRAIGUE: He fell off a roof.

1 MR. KELLY: Okay. What was he doing up there? Was he
2 roofing or framing or what?

3 MR. CRAIGUE: He was helping a friend fix a roof that caved
4 in.

5 MR. KELLY: Oh, he was working on a --

6 MR. CRAIGUE: Yep.

7 MR. KELLY: Okay. And he fell. So was he able to come
8 back out to work after that or no?

9 MR. CRAIGUE: No, he's still in bedrest -- he's -- brain
10 injury, he can't -- he's a vegetable.

11 MR. KELLY: Do you know how far he fell by chance?

12 MR. CRAIGUE: 30-something feet.

13 MR. KELLY: He fell 30-something feet?

14 MR. CRAIGUE: Yeah. Up in Colbert, New Hampshire.

15 MR. KELLY: Okay. And he was like just helping a friend or
16 something?

17 MR. CRAIGUE: Yeah, (inaudible) had a bad winter, roof
18 caved in. He was up there -- he took his stuff up there to help
19 him out and that's what happened.

20 MR. KELLY: Okay. Did he -- did your dad have any fall
21 protection stuff?

22 MR. CRAIGUE: I can't answer that. I don't know.

23 MR. KELLY: You don't know if he did, okay.

24 MR. CRAIGUE: That was a long time ago.

25 MR. KELLY: Okay. Yeah, 2000. All right. So the next

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1 question is who is the actual decision maker for the company?
2 Who actually has the final say with the company's business? For
3 example, like who lines up all the jobs for the company? Who
4 handles contracts with the clients and subcontractors? Who
5 pulls and pays for permits? And who purchases all the materials
6 needed to perform the work at the job site, including when
7 you're billing the clients for the materials and work being
8 performed? Who does all of that?

9 MR. CRAIGUE: Me.

10 MR. KELLY: You're the only one. There's no one else?

11 MR. CRAIGUE: Nope.

12 MR. KELLY: All right. So Number 9, does the company have
13 a written safety and health program? Do you have a written --

14 MR. CRAIGUE: I do not.

15 MR. KELLY: You do not? Okay. So what type of work does
16 your company perform, just besides -- I know you do siding.
17 What else do you do?

18 MR. CRAIGUE: Siding and windows.

19 MR. KELLY: And windows?

20 MR. CRAIGUE: Yeah.

21 MR. KELLY: What about like roofing jobs?

22 MR. CRAIGUE: If I got a roof job, I'd sub that out.

23 MR. KELLY: So you don't do any roofing at all?

24 MR. CRAIGUE: I have. I have. But --

25 MR. KELLY: Do you remember when the last time you did a

1 roofing job?

2 MR. CRAIGUE: That I didn't sub out? No, I can't.

3 MR. KELLY: Okay. What about like framing; do you do any
4 type of framing?

5 MR. CRAIGUE: If we did framing, it would be like light
6 framing say on a deck or something. But no.

7 MR. KELLY: Yeah.

8 MR. CRAIGUE: We did -- I -- are we going back five years
9 here? Are we going back --

10 MR. KELLY: Well, I mean, well, within the last five, six
11 years.

12 MR. CRAIGUE: Because ten years ago, I was a little bit
13 bigger, with more guys, we did more things. So I just didn't
14 want to mislead you that way.

15 MR. KELLY: Okay. But within the last -- so at one time
16 you were doing roofs?

17 MR. CRAIGUE: At one time I was doing small additions.

18 MR. KELLY: Small additions?

19 MR. CRAIGUE: Like -- yeah.

20 MR. KELLY: But it would include --

21 MR. CRAIGUE: Haven't done those in a while.

22 MR. KELLY: It would include what, the framing and roof and
23 everything else?

24 MR. CRAIGUE: Yeah, yeah. I would do that.

25 MR. KELLY: Now, how long ago would you say that was?

1 MR. CRAIGUE: Jesus, the last one, it was probably ten
2 years -- 2010-ish now.

3 MR. KELLY: 2010, okay.

4 MR. CRAIGUE: Yeah.

5 MR. KELLY: Okay. All right. So when you do your jobs,
6 you have jobs you guys are working on, are you usually at the
7 job site and how often are you there?

8 MR. CRAIGUE: Usually about -- I'm out getting stuff,
9 probably a third to half of the day.

10 MR. KELLY: Okay. A third or half of the day?

11 MR. CRAIGUE: Yep.

12 MR. KELLY: Okay. So what do you do, you just come by and
13 check on the guys and then find out what's going on? Is that
14 kind of what you're doing --

15 MR. CRAIGUE: Yeah --

16 MR. KELLY: Or do you work with them some?

17 MR. CRAIGUE: No, I do -- no. Sometimes I throw on a belt.

18 MR. KELLY: You -- sometimes you do that?

19 MR. CRAIGUE: Yep.

20 MR. KELLY: When was the last time you did that?

21 MR. CRAIGUE: It's off and on, I mean, it's recently --

22 MR. KELLY: Yeah, it could be anything.

23 MR. CRAIGUE: Yeah, I mean...

24 MR. KELLY: All right. So when you're not there, who's the
25 competent person that would make decisions for you? Or do they

1 just simply pick up a phone and call you and say, hey, we got an
2 issue; how does that work? Who can make decisions for you on a
3 job site while you're not there?

4 MR. CRAIGUE: Well, unfortunately, Mr. McKenna, he --

5 MR. KELLY: Mr. McKenna would be the one?

6 MR. CRAIGUE: Yeah. He worked for my dad -- he worked for
7 my dad -- when I took over he kind of...

8 MR. KELLY: Okay, so he --

9 MR. CRAIGUE: In a way he showed me the way.

10 MR. KELLY: But he -- he -- okay. So he would make
11 decisions for you. Could he make financial decisions or was it
12 just --

13 MR. CRAIGUE: No, no, no.

14 MR. KELLY: Okay. Okay.

15 MR. CRAIGUE: No.

16 MR. KELLY: Okay. All right. So the jobs that you're
17 doing, do they require the guys to work from ladders,
18 scaffolding systems, and then also elevated surfaces, such as
19 maybe having to go on the roof to do repairs or something like
20 that? Or do the work -- does it require them to do that type of
21 work?

22 MR. CRAIGUE: Yes.

23 MR. KELLY: Okay. So as far as -- who is responsible for
24 purchasing all of your equipment; tools, supplies used at the
25 company's job site including ladders, air compressors, pneumatic

1 air guns, scaffolding systems, all that type stuff? Who would
2 be responsible for buying all that stuff?

3 MR. CRAIGUE: Most of it was mine. Kenny had some of his
4 stuff there also.

5 MR. KELLY: So what would he have on the job site?

6 MR. CRAIGUE: He had a couple -- he had a saw that he liked
7 to use. And one set of the pump jacks, I believe, were his.

8 MR. KELLY: Okay. So he would use some of his stuff, but
9 the other ones were -- what was yours?

10 MR. CRAIGUE: Everything that -- that I did not say was
11 his.

12 MR. KELLY: Okay, just the pump jack and -- okay.

13 MR. CRAIGUE: I mean, he might have brought in a couple of
14 his -- used his own drills and stuff --

15 MR. KELLY: Hand tools or something?

16 MR. CRAIGUE: Yeah.

17 MR. KELLY: Okay.

18 MR. GARDNER: And you said that was -- that was Kenny?

19 MR. KELLY: McKenny, yeah.

20 MR. CRAIGUE: Yeah.

21 MR. KELLY: Tell me if I'm going too fast.

22 MR. GARDNER: McKenny, M-C-K --

23 MR. CRAIGUE: M-C-K-E-N-N-A.

24 MR. KELLY: Yeah. So he would have a pump jack, you said.
25 A pump jack and then a -- but all the other stuff would be

1 yours? All right.

2 Does the company have a written training program for the
3 employees who are utilizing the equipment, the company's
4 equipment? If so, is there any documentation illustrating that
5 the employees have received training? For example, have they
6 received training on ladders, scaffolding systems, pneumatic
7 nail guns, and stuff like that?

8 MR. CRAIGUE: No.

9 MR. KELLY: No? Okay. So who would be required to use the
10 company's equipment on the job site; and were the company's
11 tools or equipment inspected by a competent person daily prior
12 to their use? And is there any documentation illustrating that
13 these inspections took place?

14 MR. CRAIGUE: There's no documentation, no.

15 MR. KELLY: There's nothing? Was there anyone actually
16 doing this; doing any type of daily inspections?

17 MR. CRAIGUE: Daily?

18 MR. KELLY: Yeah, daily.

19 MR. CRAIGUE: No. I would be there -- every day I would
20 see the -- I would see the tools. I would see everything every
21 day.

22 MR. KELLY: Uh-huh. So who would have the authority to
23 remove any damaged equipment --

24 MR. CRAIGUE: Anyone.

25 MR. KELLY: Anyone?

1 MR. CRAIGUE: Yeah.

2 MR. KELLY: So anyone. Who would replace it; would it be
3 you?

4 MR. CRAIGUE: If that was the case, yes.

5 MR. KELLY: Yeah, because I mean, you'd have to purchase --
6 if something was damaged, you would have to purchase it.

7 MR. CRAIGUE: Oh, yeah, I'd go get it, yeah.

8 MR. KELLY: And there was no one that was -- there was no
9 one actually there and inspecting them then? You have no
10 documentation showing --

11 MR. CRAIGUE: I have no documentation --

12 MR. KELLY: -- any inspections or anything?

13 MR. CRAIGUE: On a ladder? No.

14 MR. KELLY: Yeah, ladders, on the air compressors, or
15 anything that they need to use for work on?

16 MR. CRAIGUE: Yeah. No, I don't know how I would have --

17 MR. KELLY: Okay.

18 MR. CRAIGUE: It's --

19 MR. KELLY: Okay.

20 MR. CRAIGUE: The air compressor or anything.

21 MR. KELLY: All right. So 16 is who is responsible for
22 purchasing safety equipment at the company and what type of
23 safety equipment does the company own? For example, do you own
24 body harnesses and lanyards, safety ropes and rope grabs, roof
25 anchors, hearing protection, eyeglasses, hardhats, et cetera?

1 Who's responsible for buying all that?

2 MR. CRAIGUE: I have all that.

3 MR. KELLY: You do have all that?

4 MR. CRAIGUE: Uh-huh.

5 MR. KELLY: Okay. So you do have all of that. So where is
6 most of this stuff kept at?

7 MR. CRAIGUE: In my basement.

8 MR. KELLY: Okay. You kept it at the basement?

9 MR. CRAIGUE: Yeah.

10 MR. KELLY: Okay.

11 MR. CRAIGUE: I mean, or the trailer. If we weren't using
12 it, it'd be thrown in the basement.

13 MR. KELLY: The basement of your house?

14 MR. CRAIGUE: I mean, everything that -- basically
15 everything that we had was there. Except for the buckets of the
16 lanyards.

17 MR. KELLY: So you do have all of this stuff then?

18 MR. CRAIGUE: I do.

19 MR. KELLY: Okay. All right. Who would be ultimately
20 responsible for the safety on the job site? Who was enforcing
21 the use of the safety equipment and who has the authority to
22 stop the job and correct the hazards prior to allowing the work
23 to continue? Who would do that?

24 MR. CRAIGUE: Just -- well, who's --

25 MR. KELLY: Who has the authority to say, hey, let's just

1 stop. We can't keep continue working. We need to put on safety
2 gear, we need to do that. Who would do that for the company?

3 MR. CRAIGUE: Oh, anyone could say -- anyone could say this
4 is safe -- it would be my -- at the end it would --

5 MR. KELLY: But the ultimate responsibility?

6 MR. CRAIGUE: Call me -- if they had a problem they would
7 come to me, yes.

8 MR. KELLY: Okay, you?

9 MR. CRAIGUE: Yeah.

10 MR. KELLY: Okay. So how do you follow up on that? How do
11 you follow up -- how would you follow up on the job site to make
12 sure that they're doing what you want them to do, safety-wise?
13 So would you -- would you -- I mean, do you go to the job site
14 and say, hey guys, you know, we need to do this. Why aren't we
15 using this? Why aren't we doing that? How would that --

16 MR. CRAIGUE: Yeah, yeah. Usually we work off -- if we're
17 going up a wall, we have to have our staging with our planks,
18 with our pump jacks, with our safety equipment. That's what we
19 have always done. And usually anything else that is used off
20 ladders.

21 MR. KELLY: Okay. All right. So who is responsible for
22 scheduling the company's projects and who assigns all of the
23 work at the company's job sites for the employees to do? So who
24 would be responsible for assigning the work?

25 MR. CRAIGUE: I mean, it would be me.

1 MR. KELLY: So you would assign the guys?

2 MR. CRAIGUE: Yeah.

3 MR. KELLY: Okay.

4 MR. CRAIGUE: Well, we do the same thing every day. It's
5 not like it's a new assignment like --

6 MR. KELLY: Well, I know. But I mean, the guys have got --
7 they still have to be told, okay, guys, I know you're here
8 today. I mean, I know how men are, you know. They come to
9 work -- they seem to forget what they did yesterday, so you have
10 to say, hey guys, we need to do this.

11 MR. CRAIGUE: Yeah, they knew -- I didn't really -- my guys
12 do what they did. And I left it -- you know.

13 MR. KELLY: Okay. All right. So here's -- we're getting
14 to Question 19. So you know, again, there's questions we have
15 to ask. So were you contacted by another government agency and
16 who was the agency that contacted you?

17 MR. CRAIGUE: For --

18 MR. KELLY: In regards to this?

19 MR. CRAIGUE: Are you talking like the labor board?

20 MR. KELLY: Yes. Yes.

21 MR. CRAIGUE: Yeah, I've spoken to them.

22 MR. KELLY: Okay. So they contact -- it was the labor --
23 New Hampshire labor board?

24 MR. CRAIGUE: Correct.

25 MR. KELLY: Okay. Okay. All right. So what was the

1 reason they contacted you? Did it have anything to do with Mr.
2 Erickson and Mr. McKenna's status at the company?

3 MR. CRAIGUE: Yes.

4 MR. KELLY: Okay. So -- okay, so basically that's what it
5 says. Was the investigating conducted to determine the workers'
6 comp provided to these individuals? Is that true?

7 MR. CRAIGUE: They're still making -- I had a meeting with
8 them last week and they're going --

9 MR. KELLY: But I mean, that's what they contacted you for;
10 is that correct?

11 MR. CRAIGUE: Correct.

12 MR. KELLY: Okay.

13 MR. CRAIGUE: Yep, yep.

14 MR. KELLY: Okay. So there was a meeting set up. And what
15 day did you meet with them, do you remember?

16 MR. CRAIGUE: I want to say it was last Tuesday or
17 Wednesday.

18 MR. KELLY: Okay. Last Wednesday or Tuesday?

19 MR. CRAIGUE: What's today? Yeah, I'm sorry I don't --

20 MR. KELLY: No, that's okay --

21 MR. CRAIGUE: Usually I check on my phone. I left my
22 phone --

23 MR. KELLY: Yeah. No, that's okay. So last Tuesday or --

24 MR. CRAIGUE: Last -- middle of last week.

25 MR. KELLY: Okay. All right. So what was their

1 investigating procedure? For example, was it just interviews,
2 did they ask you to bring in paperwork, any type of
3 documentation from your company? What did it consist of?

4 MR. CRAIGUE: They were looking for documentation on
5 contracts between -- I had with Mr. McKenna and Mr. Erickson.

6 MR. KELLY: Okay.

7 MR. CRAIGUE: Or timecards.

8 MR. KELLY: Oh, that type of stuff, okay.

9 MR. CRAIGUE: That type of stuff.

10 MR. KELLY: Okay. So you were able to provide them with
11 that information?

12 MR. CRAIGUE: No.

13 MR. KELLY: Did you just -- you didn't have it?

14 MR. CRAIGUE: No.

15 MR. KELLY: Okay. At the conclusion of this process, did
16 they inform you of whatever their findings were? Did they tell
17 you what their findings were, or their ruling?

18 MR. CRAIGUE: I think that's what they're doing now.

19 MR. KELLY: So what did --

20 MR. CRAIGUE: I'm not trying --

21 MR. KELLY: Right --

22 MR. CRAIGUE: I don't know how this -- how the program
23 works --

24 MR. KELLY: Did they tell you what they thought their
25 opinion was or what?

1 MR. CRAIGUE: Yeah. Yeah.

2 MR. KELLY: So what did they tell you?

3 MR. CRAIGUE: They told me their opinion. And they're
4 figuring it out now.

5 MR. KELLY: Okay. So what did they say?

6 MR. CRAIGUE: They're trying to figure out if they're
7 subcontractors or employees.

8 MR. KELLY: Okay. And they didn't tell you what they
9 believed their decision was?

10 MR. CRAIGUE: They -- no. Well, there's a process they
11 have to do, too.

12 MR. KELLY: Yeah.

13 MR. CRAIGUE: So they came out -- they said -- it was more
14 of a hearing, I think, and --

15 MR. KELLY: Right, right.

16 MR. CRAIGUE: More than anything. So they said their side
17 and I just told them the truth about mine, you know.

18 MR. KELLY: Okay. So 24, did the agency determine that
19 Mr. Erickson and Mr. McKenna were actually employees of your
20 company and not subcontractors?

21 MR. CRAIGUE: I don't know if they can say that yet
22 because -- do you know what I'm saying? Because of the hearing.
23 They said they had 30 days to look over everything. I'm not
24 being --

25 MR. KELLY: Right.

1 MR. CRAIGUE: I'm not trying to like go skate around this
2 answer. That's what they told me.

3 MR. KELLY: Okay.

4 MR. CRAIGUE: This stuff is really new to me, so.

5 MR. KELLY: Right, right, right. Well, with agencies, you
6 know, honestly -- Craig, I'll be honest with you. We do share
7 information with each one --

8 MR. CRAIGUE: Obviously, I get it --

9 MR. KELLY: Yeah, they got it. Because it depends on the
10 investigation they're doing, we have to share.

11 MR. CRAIGUE: Yeah, I totally understand.

12 MR. KELLY: So he didn't tell you that according to them
13 that they are -- that they find that the individuals were not
14 subcontractors?

15 MR. CRAIGUE: They told me their reasons why they thought
16 they were not, correct.

17 MR. KELLY: Okay. So that's what they told you, okay.

18 MR. CRAIGUE: Yep, yep.

19 MR. KELLY: Okay. So do you know if you're going to
20 receive any citations by the agency for not providing Mr.
21 Erickson or Mr. McKenna with workers' comp insurance?

22 MR. CRAIGUE: I believe I will be.

23 MR. KELLY: Okay. So you believe -- okay. So Number --
24 the next one is 26. So basically, I know when you and me met, I
25 know things were very bad because the accident just happened.

1 MR. CRAIGUE: Yep.

2 MR. KELLY: And I tried to interview you and I understand
3 there was a lot of stuff going on. I truly understand that.

4 MR. CRAIGUE: Yep.

5 MR. KELLY: And it's very hard. And I'm sure it's still
6 hard. But I mean, you know, we have to know -- I've got to have
7 the truth.

8 MR. CRAIGUE: Yes.

9 MR. KELLY: Really, honestly. So I'm just asking you
10 again, I know I asked you there. Is Christopher and Skinny, are
11 they employees of your company?

12 MR. CRAIGUE: I've always treated them -- they would come
13 and go as they please, so I would always treat them as not
14 employees. They came and go. I know there's paperwork saying
15 they're not, but how I treated them was not as employees. They
16 did what they -- they did what they wanted to do. And I would
17 pay them. That's the God's honest truth.

18 MR. KELLY: Okay. But you know, it's interesting because
19 if you look, you know, Mr. McKenna --

20 MR. CRAIGUE: Yeah.

21 MR. KELLY: -- had worked for your company for like
22 20-something years?

23 MR. CRAIGUE: Off and on. Off and on.

24 MR. KELLY: Okay. That's a long time to be --

25 MR. CRAIGUE: Yep.

1 MR. KELLY: -- be an independent contractor to work
2 somewhere for that many years. And then what, Christopher
3 worked for three years, correct?

4 MR. CRAIGUE: I'm not sure about how long he worked.

5 MR. KELLY: Okay.

6 MR. CRAIGUE: But it was off and on for a couple years at
7 least.

8 MR. KELLY: So they were there a while.

9 MR. CRAIGUE: Yep.

10 MR. KELLY: Okay. So how long did Mr. McKenna actually
11 work for the company and what was his job title?

12 MR. CRAIGUE: Laborer.

13 MR. KELLY: He was a laborer, okay.

14 MR. CRAIGUE: I guess.

15 MR. KELLY: Okay.

16 MR. CRAIGUE: I don't know.

17 MR. KELLY: And he worked for what?

18 MR. CRAIGUE: He could call whatever he wanted.

19 MR. KELLY: Okay. So was it 20 years possibly or --

20 MR. CRAIGUE: Yeah, off and on for that, yeah.

21 MR. KELLY: Okay. So how long did Christopher work for the
22 company, Mr. Erickson?

23 MR. CRAIGUE: Off -- two summers ago. So I want to say
24 just under a couple years.

25 MR. KELLY: Okay.

1 MR. CRAIGUE: I used him for a couple years.

2 MR. KELLY: Okay. And then Ford, he'd only been there a
3 few days or something?

4 MR. CRAIGUE: Yeah.

5 MR. KELLY: How long did he work?

6 MR. CRAIGUE: A day.

7 MR. KELLY: He worked one day?

8 MR. CRAIGUE: Yep. One full day, yep.

9 MR. KELLY: Okay. All right. So in the last year, how
10 many total employees has the company had working for them
11 including any part-time folks?

12 MR. CRAIGUE: Employees, zero. Except for the people that
13 we talked about.

14 MR. KELLY: So there was no one else except for the three
15 guys?

16 MR. CRAIGUE: Correct.

17 MR. KELLY: Basically three, okay. All right. So Number
18 31, who did McKenna, Erickson, and Ford all consider to be their
19 supervisor or their employer? Who did they consider that to be?

20 MR. CRAIGUE: Well, they're getting their money from me.

21 MR. KELLY: Okay. That'd be you. All right. So again, so
22 a lot of these questions maybe seem somewhat like they repeat
23 but, who was responsible for directing all of these guys' work
24 and assignments on the job site? For example, who sets the
25 daily tasks for these individuals who are working, for all three

1 guys? Who would do that?

2 MR. CRAIGUE: I wouldn't have like a written up plan. They
3 knew what had to be done. I mean --

4 MR. KELLY: But I mean, who would direct them? I mean, who
5 would direct them to do what they need to do?

6 MR. CRAIGUE: I would say we're going to do this wall. I
7 would say that.

8 MR. KELLY: You would do -- okay. So was there any type of
9 written contract between Mr. McKenna, Mr. Erickson, or Mr. Ford
10 to perform any work on the job site? And did any of these guys
11 have to provide you with any type of billing when they were
12 performing the work? So how did that work? So was there any
13 type of contract?

14 MR. CRAIGUE: No.

15 MR. KELLY: Okay, there was --

16 MR. CRAIGUE: No.

17 MR. KELLY: So what about say (inaudible) working the job,
18 they wanted you, you said get up here I want you to remove all
19 this wall right there.

20 MR. CRAIGUE: Yeah.

21 MR. KELLY: Did they have to give you receipts for doing
22 that?

23 MR. CRAIGUE: No. I know I should have...

24 MR. KELLY: All right. Okay. So again, we talked about
25 this, too, before so. How were Mr. McKinney, Mr. Erickson, and

1 Mr. Ford paid by the company? For example, were they paid by
2 check, cash, or other means? And who set the amount of their
3 salary? And what were they paid; by the hour, by the week, by
4 the month? So exactly -- so were they paid by the hour? Was --
5 let me ask you this. Was Christopher paid \$16 an hour?

6 MR. CRAIGUE: He was paid -- he was paid around there,
7 yeah.

8 MR. KELLY: Okay. And then Skinny, was he paid like \$21 an
9 hour?

10 MR. CRAIGUE: 21, if it was for his harder work I would
11 give him more money, you know.

12 MR. KELLY: Okay. So basically what -- so Mr. Erickson was
13 given \$16 an hour?

14 MR. CRAIGUE: Yep.

15 MR. KELLY: And then Mr. McKenna was paid \$21 an hour?

16 MR. CRAIGUE: Well, him and -- him and I had a different
17 relationship. He'd tell me what -- (inaudible) I'd pay him.

18 MR. KELLY: So what about Ford, so what was he paid by the
19 hour?

20 MR. CRAIGUE: We never even got there.

21 MR. KELLY: So did he get paid anything for the day?

22 MR. CRAIGUE: He must have. I must have given him
23 something. Because I don't --

24 MR. KELLY: Okay. So did they ever have to give you
25 receipts or anything for their job?

1 MR. CRAIGUE: No. No, but I should have. And I'm learning
2 it the hard way. Mr. Erickson did tell me he owned his own
3 business. And he -- which comes back to me. I didn't follow
4 up, I believed him. But he did tell me he owned his own
5 business and he had all that stuff and.

6 MR. KELLY: Okay. So 35, did you have the right to
7 terminate these guys any time you wanted to? Could you just
8 say, hey, you're fired?

9 MR. CRAIGUE: Yeah, they had the right not to show -- yeah.
10 I mean, they come and go as they please. I mean.

11 MR. KELLY: But I mean, you could fire them off your jobs
12 if you wanted to?

13 MR. CRAIGUE: Yeah.

14 MR. KELLY: All right. If your job sites fell apart, would
15 any of these guys suffer financially? Not including hourly wage
16 or whatever. But would they suffer any other way financially if
17 the job went bad and them guys were working on it? Would they
18 lose money?

19 MR. CRAIGUE: No.

20 MR. KELLY: Okay.

21 MR. CRAIGUE: No, I would take care of everyone first
22 before me.

23 MR. KELLY: Okay. So let's see. Did you ever do work out
24 of town where you guys had to travel out of town some?

25 MR. CRAIGUE: Uh-huh.

1 MR. KELLY: So who would pick up those expenses? I mean,
2 like somebody having a hotel bill? Who would have to pay --

3 MR. CRAIGUE: No, we never did anything like that.

4 MR. KELLY: You never stayed out of town where you had to
5 stay in a motel?

6 MR. CRAIGUE: No.

7 MR. KELLY: Okay. So did Mr. McKenna, Mr. Erickson, or Mr.
8 Ford, did any of them have the ability to hire assistants on the
9 job sites? Can they just hire anybody they wanted to work with
10 them?

11 MR. CRAIGUE: Like bring them on the job?

12 MR. KELLY: Yeah, your jobs. Could they just say, hey, I'm
13 hiring somebody to work on the job site? Could they do that?

14 MR. CRAIGUE: I mean, they'd have to ask me.

15 MR. KELLY: But I'll tell you, they couldn't -- they just
16 couldn't just go hire somebody they wanted to then?

17 MR. CRAIGUE: I wouldn't -- no, I would have to meet
18 someone before I let them on my job.

19 MR. KELLY: Okay. I mean, that's what I'm saying. It
20 was -- was it their decision to say, hey, I'm hiring another guy
21 to go to work, he's going to be my assistant. On one of your
22 job sites?

23 MR. CRAIGUE: If Skinny wanted a cutter, it did it in the
24 past, yeah, but --

25 MR. KELLY: But you have the ultimate decision over there,

1 wouldn't you? Could you just bring anybody -- he wouldn't be
2 able to just bring anyone in. It would have to go through you,
3 wouldn't they?

4 MR. CRAIGUE: Well, I would want to meet them first.

5 MR. KELLY: Okay. So have you provided these guys with any
6 type of training with Mr. McKenna, Mr. Erickson, or Ford. And
7 is there any training records to indicate any of this?

8 MR. CRAIGUE: No.

9 MR. KELLY: No? Okay. Have you provided Mr. McKenna and
10 Mr. Erickson with a 1099 form?

11 MR. CRAIGUE: No.

12 MR. KELLY: W2 forms or anything.

13 MR. CRAIGUE: No.

14 MR. KELLY: Did any of these guys, Mr. McKenna, Mr.
15 Erickson, or Mr. Ford, ever provide you with any type of
16 liability insurance policies or anything?

17 MR. CRAIGUE: No.

18 MR. KELLY: Okay. So we'll go down -- we're going to move
19 into the job down the street, okay?

20 MR. CRAIGUE: All right.

21 MR. KELLY: Are you okay? You fine? Okay. So when did
22 the job actually start? What day did the job start on? We can
23 kind of look at that. Do you remember what day it started on?

24 MR. CRAIGUE: I really don't.

25 MR. KELLY: Do you remember when your contractual date was

1 or?

2 MR. CRAIGUE: I want to say it was a little bit before
3 this.

4 MR. KELLY: Oh, before July?

5 MR. CRAIGUE: I want to say that for some reason. Just
6 because of July 4th weekend. I'm trying to think.

7 MR. KELLY: So maybe late June?

8 MR. CRAIGUE: It might be, yeah.

9 MR. KELLY: Late June it probably started? Okay.

10 MR. CRAIGUE: Yeah.

11 MR. KELLY: Okay. So who were the guys that went to work,
12 who were they? When you started, who was working with you?

13 MR. CRAIGUE: The people that we talked about.

14 MR. KELLY: So all -- except for Ford, right? How long was
15 Ford --

16 MR. CRAIGUE: No, correct.

17 MR. KELLY: So it was McKenna.

18 MR. CRAIGUE: Yeah.

19 MR. KELLY: And then Mr. Erickson. Okay. And were there
20 any other contractors on the job that started or no?

21 MR. CRAIGUE: What do you mean, contractors?

22 MR. KELLY: Were there anybody else on the job working at
23 that time when you started?

24 MR. CRAIGUE: No, I was the only company on -- I had --
25 someone else was helping me.

1 MR. KELLY: Well, then did they start at the same time?

2 MR. CRAIGUE: No. They were just -- no. I don't think so.

3 MR. KELLY: Okay. So what was your actual scope of work;
4 what were you supposed to do?

5 MR. CRAIGUE: Siding and windows.

6 MR. KELLY: Siding and windows?

7 MR. CRAIGUE: Uh-huh.

8 MR. KELLY: Okay. So I got the information here. I wanted
9 to look at maybe the building with you.

10 MR. CRAIGUE: Yep.

11 MR. KELLY: So what I did was I made a copy of the building
12 to look at. So how much of the building were you doing? I
13 mean, this is all four sides.

14 MR. CRAIGUE: Uh-huh.

15 MR. KELLY: So what were you doing; did you do all this
16 work, did you -- well, what did you do? What was all your scope
17 of work?

18 MR. CRAIGUE: All the --

19 MR. KELLY: All of it?

20 MR. CRAIGUE: The siding and the windows.

21 MR. KELLY: And so what -- was there a lot of damage in
22 behind this old siding or something? Is that what happened? Or
23 they just wanted it updated or something?

24 MR. CRAIGUE: It was just an update.

25 MR. KELLY: Is that what it was? Okay. So that was just

1 an update. Okay.

2 MR. CRAIGUE: Weatherproofing it.

3 MR. KELLY: Weatherproofing? Okay. And how long was the
4 job supposed to take?

5 MR. CRAIGUE: A month.

6 MR. KELLY: It was supposed to take a month?

7 MR. CRAIGUE: Month and a half. That was my guess.

8 MR. KELLY: Okay. So we're at 40, I believe. Before you
9 started this job --

10 MR. CRAIGUE: Yep.

11 MR. KELLY: -- was there a pre-construction meeting held to
12 determine what challenges would be on this job site?

13 MR. CRAIGUE: Yeah.

14 MR. KELLY: You did do that? Who took part in that
15 pre-construction meeting? Did Shane -- was Shane there or was
16 somebody else --

17 MR. CRAIGUE: Yeah, Shane -- we had a walk-through.

18 MR. KELLY: You did a walk-through?

19 MR. CRAIGUE: Uh-huh.

20 MR. KELLY: Was there any meeting -- meeting minutes taken
21 or anything like that?

22 MR. CRAIGUE: I don't know what you mean.

23 MR. KELLY: Well, like did he write anything down, like
24 anything that you guys discussed, what might be the challenges
25 of this job? Because the reason I'm asking --

1 MR. CRAIGUE: Yeah --

2 MR. KELLY: So the reason I'm asking you is number one,
3 you've got an active building with not only clients, but we have
4 customers in and out of this building all day --

5 MR. CRAIGUE: Yeah.

6 MR. KELLY: -- and that'll be a challenge. And these other
7 areas. So we got other areas of the building, up here --

8 MR. CRAIGUE: Yep.

9 MR. KELLY: -- that we've got to figure out how we're going
10 to get up there to do the work.

11 MR. CRAIGUE: Uh-huh.

12 MR. KELLY: So those would be challenges. Other challenges
13 would be like these areas where you had work up here, but you
14 were going to have to get on roofs to perform certain jobs. So
15 did you look at those challenges and try to figure out what were
16 you going to do there?

17 MR. CRAIGUE: No.

18 MR. KELLY: So you didn't? Okay. But you did have a
19 pre-construction meeting?

20 MR. CRAIGUE: Uh-huh.

21 MR. KELLY: Okay. All right. The next one is almost the
22 same question. It's prior to starting the project, was there a
23 hazard assessment performed on the job site to determine what
24 hazards are present? And were the hazards identified? And what
25 procedures were put in place to eliminate these hazards? So

1 basically, just kind of like what we were talking about.

2 So when you're looking at a project, you're out here, one
3 thing you're going to have to know right off the bat, what am I
4 going to be doing, what am I going to be doing, what am I going
5 to be working from -- are my guys working, and how are we going
6 to accomplish this job site? So we need to do some kind of
7 assessment.

8 So areas -- if we're looking at areas, I mean, here
9 automatic, that would be a flag. So you're looking at the south
10 side of the building. We know we've got to somehow -- we've got
11 to get up there. Because this work has got to get done.
12 Someone's going to have to stand up here and do the job. Here
13 and these areas as well. We're going to have to get around
14 these -- this area is another one.

15 But these other areas, everywhere where there was a
16 bump-out, all these areas, there was going be some issues
17 because we have to figure out how we're going to get up there
18 and do the work all in here. Pull this stuff off the wall and
19 get in there and do it.

20 MR. CRAIGUE: Uh-huh.

21 MR. KELLY: And if you're looking at it, some of the places
22 are not as wide, but you're still talking about over two feet or
23 more. So it's hard if you're going try to do something on a
24 ladder.

25 MR. CRAIGUE: Yep.

1 MR. KELLY: So did you look at those areas? Did you look
2 at this?

3 MR. CRAIGUE: Yeah. Yeah. This could all be reached --
4 even this could have been reached from a ladder from the ground.

5 MR. KELLY: Okay.

6 MR. CRAIGUE: And we had our staging up here.

7 MR. KELLY: Okay. So --

8 MR. CRAIGUE: We had eight foot pump jacks going up the
9 side and we had two sets and we'd --

10 MR. KELLY: Okay. But when you -- so the pump jacks, it
11 was difficult to get on here, the way I understand. Because as
12 they -- even if they set up their pump jacks, it was hard to get
13 over here and perform the work that needed to be done along
14 here. Do you know what I'm talking about? All the areas right
15 inside here.

16 MR. CRAIGUE: Yeah.

17 MR. KELLY: And I understand if you're up here on the side,
18 but once you put your pump jacks -- even if you got them close,
19 even if you set them here and went up this way, you would still
20 have an issue right here on all of these bump-outs. They would
21 still be an issue.

22 And the way I understand, Nath, between interviews, with
23 interviews --

24 MR. CRAIGUE: Yeah.

25 MR. KELLY: -- with several people, the guys were actually

1 having to climb up here to perform the work because they were
2 not able to do the work -- do you understand what I'm saying?

3 MR. CRAIGUE: I got you.

4 MR. KELLY: Do you understand what I'm trying to say?

5 MR. CRAIGUE: Yeah.

6 MR. KELLY: They were able -- they were trying to do it.
7 So they were having to get here. I know they're there. But
8 they were having to climb up here. So did you know that they
9 were doing this? Did you know that they had to climb up there
10 to do this work on those bump-out roofs?

11 MR. CRAIGUE: Yeah, they had -- from what I remember, they
12 had the roof brackets going up with their staging was down
13 there.

14 MR. KELLY: Okay. But were they wearing fall, fall
15 protection, when they were up there?

16 MR. CRAIGUE: No.

17 MR. KELLY: They wouldn't -- okay. So was there any fall
18 protection on the job site, any fall protection --

19 MR. CRAIGUE: No.

20 MR. KELLY: -- for those guys to wear?

21 MR. CRAIGUE: No, I told you that.

22 MR. KELLY: So there was nothing?

23 MR. CRAIGUE: Nope. If it was needed, they -- I would have
24 brought it there.

25 MR. KELLY: So I also understand that you were there. So

1 when they were working there, did you see them working up there?

2 MR. CRAIGUE: I don't remember that.

3 MR. KELLY: You don't remember seeing the guys working up
4 there?

5 MR. CRAIGUE: Specific spots? No.

6 MR. KELLY: But, I mean, do you remember seeing them
7 working --

8 MR. CRAIGUE: Yeah. Of course.

9 MR. KELLY: Working up on the roof doing that work? Okay.
10 So was --

11 MR. CRAIGUE: I --

12 MR. KELLY: So when you did, was there any reason why you
13 didn't say, hey, guys, why aren't you wearing fall protection?
14 Was there any reason why you wouldn't have said that?

15 MR. CRAIGUE: Nope.

16 MR. KELLY: Okay. So again, we have those -- couple --
17 those few areas there. So as far as the fall protection, have
18 you used it in the past?

19 MR. CRAIGUE: Yes.

20 MR. KELLY: Okay. Do you remember the last time you used
21 the fall protection?

22 MR. CRAIGUE: As I said, when we stopped doing roofs, we
23 put it up. I don't remember the last time to be honest with
24 you.

25 MR. KELLY: You don't remember the last time you used it?

1 MR. CRAIGUE: No.

2 MR. KELLY: Okay. And when you did use it, do you even
3 remember what it was? Was it body harnesses?

4 MR. CRAIGUE: Yeah, they were body harnesses.

5 MR. KELLY: It was body harnesses?

6 MR. CRAIGUE: Yeah.

7 MR. KELLY: Okay. What about anything -- did you -- what
8 about like, did you ever use temporary railing or scissor lifts
9 or booms to do work instead of --

10 MR. CRAIGUE: I never rented one, no.

11 MR. KELLY: You never rented a -- okay, a scissor lift?

12 MR. CRAIGUE: No.

13 MR. KELLY: All right. And you used -- but you used body
14 harnesses?

15 MR. CRAIGUE: Uh-huh.

16 MR. KELLY: Okay. So again like I said, there's questions
17 we have to ask, okay?

18 MR. CRAIGUE: Yep.

19 MR. KELLY: Okay. So why did you use this method of fall
20 protection and for what purpose? Why did you use the body
21 harnesses in the past? What was the purpose of it?

22 MR. CRAIGUE: To follow guidelines.

23 MR. KELLY: To prevent the falls or whatever?

24 MR. CRAIGUE: Yeah. To follow guidelines, yeah.

25 MR. KELLY: And then you said the last time you used it you

1 don't remember?

2 MR. CRAIGUE: I can't give you a date, no.

3 MR. KELLY: You don't remember? It's been a few years?

4 MR. CRAIGUE: Yes. Since we've done a roof, yeah, that's
5 when we usually used them.

6 MR. KELLY: All right. Same type question. Who would be
7 ultimately responsible to make the decision regarding the fall
8 protection at the job site? Who would be the one saying you got
9 to put this stuff on?

10 MR. CRAIGUE: If they feel uncomfortable doing something
11 they would talk to me. So it would be me.

12 MR. KELLY: And you would tell them to put it on?

13 MR. CRAIGUE: Yeah. Yeah. They didn't want -- this is
14 where it's come in because they want the whole -- they want to
15 do their own thing, with the subcontracting thing until
16 something happens, you know. They want to do their own thing.
17 And then this.

18 MR. KELLY: Okay. And I realize some of the questions are
19 hard --

20 MR. CRAIGUE: Yeah.

21 MR. KELLY: -- but they have to be asked.

22 MR. CRAIGUE: I've been transparent with you. I really
23 have.

24 MR. KELLY: Okay. Okay. And so even the question is is if
25 you have used the fall protection in the past, what is the

1 reason that it wasn't used on this job?

2 MR. CRAIGUE: They didn't ask for it.

3 MR. KELLY: They didn't ask for it?

4 MR. CRAIGUE: Yeah.

5 MR. KELLY: Was it at the job site? It wasn't at the job
6 site then --

7 MR. CRAIGUE: I already told you that, no.

8 MR. KELLY: Okay. Does the company have a written fall
9 protection program?

10 MR. CRAIGUE: No. No.

11 MR. KELLY: Is there any type of training program -- any
12 kind of training showing, illustrating that these guys have been
13 trained in fall protection?

14 MR. CRAIGUE: No. I'm just a one-guy show with the guy
15 that taught me the business. And I hired the guy that I thought
16 he owned his own business. So I'm not this big company that did
17 all this, you know.

18 MR. KELLY: Okay. All right. So was there a schedule made
19 for the project?

20 MR. CRAIGUE: No.

21 MR. KELLY: There wasn't no schedule?

22 MR. CRAIGUE: Not really.

23 MR. KELLY: So how did you guys -- how did you figure all
24 this out? How did you lay it out so that you knew that you were
25 going to meet your deadline? Was there a deadline made?

1 MR. CRAIGUE: No.

2 MR. KELLY: There were no deadlines?

3 MR. CRAIGUE: No.

4 MR. KELLY: So no schedule, and he didn't give you a
5 deadline when you had to be done?

6 MR. CRAIGUE: Uh-uh.

7 MR. KELLY: Okay. So how did you lay this out? I mean,
8 did you -- what area did you actually start in, do you remember?

9 MR. CRAIGUE: I believe we started this way.

10 MR. KELLY: So you started -- this would be the west end of
11 the building. And you started here and then what did you move
12 to? Do you remember what you moved to next?

13 MR. CRAIGUE: I believe we went counter clockwise.

14 MR. KELLY: Okay. Because this seemed like this was your
15 last part, the south end?

16 MR. CRAIGUE: Yeah.

17 MR. KELLY: So this was the south end, okay.

18 MR. CRAIGUE: I think we did wall, wall, wall, wall.

19 MR. KELLY: Okay.

20 MR. CRAIGUE: Something like that.

21 MR. KELLY: Okay. So you started on the west end. And
22 then you started on the west end, and you said you kind of moved
23 around from -- what was that -- so we started on the -- well,
24 this is the north side. Did you start on the north or west
25 side?

1 MR. CRAIGUE: We started on this side.

2 MR. KELLY: So that's the north side of the -- I'm sorry.
3 I'm sorry. That's the north side.

4 MR. CRAIGUE: And the west.

5 MR. KELLY: North and west. Okay. So you started on both.

6 MR. CRAIGUE: Yeah, you really have to start on two sides,
7 not just one.

8 MR. KELLY: Okay. Also another thing. Did you realize
9 that there were security video cameras on the building.

10 MR. CRAIGUE: Yeah, we saw them.

11 MR. KELLY: Did you see them? Okay. Did you know that
12 they were recording?

13 MR. CRAIGUE: I would assume so.

14 MR. KELLY: Yeah. Okay. They're actually being monitored
15 by the hospital.

16 MR. CRAIGUE: Yeah.

17 MR. KELLY: The building owner that owns them, he doesn't
18 own the cameras. He owns the building --

19 MR. CRAIGUE: Yeah.

20 MR. KELLY: -- but not the cameras. So the security at the
21 hospital, they're the ones that own all this and you know,
22 they're the ones that have all --

23 MR. CRAIGUE: Yeah.

24 MR. KELLY: -- the video and stuff like that. Okay. So
25 you knew that. So for this job site, I know you mentioned

1 before, were you at the job site when the guys were working?

2 Here at this job site? And how often were you there?

3 MR. CRAIGUE: Yeah, I was at the job site.

4 MR. KELLY: Okay.

5 MR. CRAIGUE: About the same --

6 MR. KELLY: And about the same thing, three quarters of the
7 time, that's what you were saying?

8 MR. CRAIGUE: Yeah.

9 MR. KELLY: Okay. So I got that. So again, this falls
10 back the same thing, when you're -- you know, when you were at
11 the job site did you see the guys working? Which I'm sure you
12 did.

13 MR. CRAIGUE: Uh-huh.

14 MR. KELLY: They were working. Did you see any safety
15 issues, like maybe they were working on the roof? And did you
16 make any -- did you say anything about safety on the job site
17 while you were there?

18 MR. CRAIGUE: I always tell them to put -- I always tell
19 them but the back rail up on the pump staging. And I always
20 tell them about the -- to work off ladders.

21 MR. KELLY: Okay. Do they have -- for example, for the
22 staging, did they actually have fall protection for that at the
23 job to use? Did they have it?

24 MR. CRAIGUE: What do you mean?

25 MR. KELLY: For the pump jacks?

1 MR. CRAIGUE: Yeah.

2 MR. KELLY: So they did have -- did they have any fall
3 protection for that?

4 MR. CRAIGUE: Like a backing?

5 MR. KELLY: Or something to keep them from falling off
6 the --

7 MR. CRAIGUE: Yeah, yeah.

8 MR. KELLY: -- pump jack?

9 MR. CRAIGUE: Yeah.

10 MR. KELLY: So it was at the job site?

11 MR. CRAIGUE: Yeah, it was --

12 MR. KELLY: But it wasn't attached to the pump jack.

13 MR. CRAIGUE: One of them wasn't, because we were taking
14 them down, but.

15 MR. KELLY: Okay.

16 MR. CRAIGUE: For the backing, yes, if that's what you're
17 asking.

18 MR. KELLY: All right. So this is getting to Mr. Erickson.
19 So what was the date of Mr. Erickson's accident?

20 MR. CRAIGUE: I don't know.

21 MR. KELLY: Okay. So it seemed like July -- around July
22 27th.

23 MR. CRAIGUE: Uh-huh.

24 MR. KELLY: I believe that was probably the date.

25 MR. CRAIGUE: Yep.

1 MR. KELLY: Okay. Were you at the job site when it
2 occurred?

3 MR. CRAIGUE: I was not.

4 MR. KELLY: Okay. So when were you notified and by who --
5 who notified you that there had been an accident?

6 MR. CRAIGUE: I got a call from maybe -- probably from
7 Kenny.

8 MR. KELLY: Kenny called you and told you about it?

9 MR. CRAIGUE: I would assume, I'm not positive, but.

10 MR. KELLY: Okay. He called you. And what did he say to
11 you then, that Christopher had just fallen off the roof or
12 whatever?

13 MR. CRAIGUE: Yeah. Yeah. I don't even know what he said.

14 MR. KELLY: Okay.

15 MR. CRAIGUE: He said he just brought Chris to the
16 hospital. His finger was messed up, something like that.

17 MR. KELLY: All right. So did you go to the job site to
18 investigate what was going on?

19 MR. CRAIGUE: Yeah, well, I went and saw Chris at the
20 hospital.

21 MR. KELLY: You did go to the hospital?

22 MR. CRAIGUE: Yeah.

23 MR. KELLY: Okay. And what did he tell you there?

24 MR. CRAIGUE: We didn't really talk.

25 MR. KELLY: Okay. So when did you find out that he

1 actually fell from the roof? And I believe where he fell was
2 right here. He was working up here and fell from here.

3 MR. CRAIGUE: Yeah, he --

4 MR. KELLY: So what did he tell you? Or what did --

5 MR. CRAIGUE: I didn't even know he was working from there.
6 I didn't tell him to go work on that or anything so I didn't --

7 MR. KELLY: So he was performing some work up here.

8 MR. CRAIGUE: Uh-huh.

9 MR. KELLY: And according to what I understand, he was
10 removing the siding and doing some removal here to replace it.
11 And if you look at this, you -- really no way you could really
12 get on here without stepping on top of that roof to perform that
13 work, because this is almost four foot out. If you set your
14 ladder up here, even if you try to -- it's so difficult to try
15 to set a ladder in here or in there.

16 And even here, you're still far enough away from it, you
17 can't truly work on a ladder to perform the work. So what was
18 supposed to be -- what was he supposed to have done?

19 MR. CRAIGUE: We never -- I'm not lying -- we never talked
20 about him doing that.

21 MR. KELLY: Okay. But is that part of the work that had to
22 be done, though?

23 MR. CRAIGUE: I -- eventually --

24 MR. KELLY: I mean, didn't it have to be done?

25 MR. CRAIGUE: Eventually, yeah.

1 MR. KELLY: Okay. Well then who told him that he had to
2 get up there and do that?

3 MR. CRAIGUE: I'm not sure.

4 MR. KELLY: So you didn't direct him or Skinny didn't
5 direct him or what?

6 MR. CRAIGUE: Nope. I'm not trying to be difficult.
7 That's how the job -- like these guys did what they wanted to
8 do. Like I got my job -- you couldn't tell them what -- they
9 would do what they did. Like, I'm not being like -- I'm not
10 telling you -- trying to be wise or anything like that. They
11 would just go do what they did. That's what they did. They
12 didn't like to be told what to do.

13 MR. KELLY: Well, so that's really the next question. What
14 was Mr. Erickson doing and who assigned him to perform this
15 work? I know he apparently was removing --

16 MR. CRAIGUE: Yeah.

17 MR. KELLY: He was removing the old siding up here.

18 MR. CRAIGUE: Uh-huh.

19 MR. KELLY: Okay. So you did -- so I guess -- when did you
20 find out that he actually fell?

21 MR. CRAIGUE: That day.

22 MR. KELLY: So you did find out that day that he fell?

23 MR. CRAIGUE: Yeah.

24 MR. KELLY: Okay. So that was July 27th. So as part of
25 that work, for him to do that work, did it require him to stand

1 up on the roof to get it done?

2 MR. CRAIGUE: We never talked about it. We never talked
3 about him doing that section of that roof.

4 MR. KELLY: But if you look at the -- so let's just say --
5 well, we'll look at it.

6 MR. CRAIGUE: Yep.

7 MR. KELLY: We look at it. How is this supposed to get
8 accomplished without standing right here?

9 MR. CRAIGUE: I'm not sure. It was never talked about.

10 MR. KELLY: But I mean, you're looking at it. How would
11 you do that?

12 MR. CRAIGUE: Yeah.

13 MR. KELLY: I mean, like I said, even being there looking
14 at it --

15 MR. CRAIGUE: Yep.

16 MR. KELLY: -- it's hard to set up a ladder to reach all
17 these areas in there. How would this be accomplished without
18 standing on that roof?

19 MR. CRAIGUE: I can't tell you right now without being able
20 to put a ladder there and see if I could reach it. I don't
21 know.

22 MR. KELLY: Yeah, because you know with a ladder, you still
23 have to have three points of contact. So it's kind of hard to
24 try to hang on with one arm and reach out to perform it.

25 MR. CRAIGUE: Yeah.

1 MR. KELLY: So I mean, it would be -- it would be very
2 difficult to try to perform this just standing on the ladder. I
3 mean, you know, it's just -- it's -- somebody doing that would
4 think it's feasible for them to stand up there and do it because
5 they could be standing up there, instead of trying to do it off
6 of a ladder.

7 MR. CRAIGUE: To be honest with you, I would have taken the
8 ladder there. He used -- I think they used a roof rake to strip
9 the rest of the place. I don't understand why he wasn't -- we
10 never talked about him doing this or how. Why he wouldn't just
11 take the roof rake from that ladder. Like I don't -- that's
12 what -- I was just kind of shocked that...

13 MR. KELLY: Okay.

14 MR. CRAIGUE: That this was an issue.

15 MR. KELLY: So what was the result of his fall? What
16 injuries were sustained as a result of him --

17 MR. CRAIGUE: He broke his pinkie.

18 MR. KELLY: Okay. Was that all?

19 MR. CRAIGUE: And he told me he fractured -- he had a
20 fracture in his pelvis.

21 MR. KELLY: So he fractured his pelvis?

22 MR. CRAIGUE: Yep.

23 MR. KELLY: Okay.

24 MR. CRAIGUE: And he --

25 MR. KELLY: Okay, so do you know when -- do you know when

1 he'll be able to return back to work?

2 MR. CRAIGUE: He told -- he went ghost on me. So obviously
3 something's going on. He told me he'd be back to work in a
4 couple weeks. And he even asked me when he could come back to
5 work right before Skinny got hurt -- before Skinny got hurt.

6 MR. KELLY: Okay.

7 MR. CRAIGUE: So.

8 MR. KELLY: So was he still employed by the company or --

9 MR. CRAIGUE: I was never -- he was never employed. He
10 worked when he wanted to. I'd always have work for him if he
11 wanted to work.

12 MR. KELLY: Okay.

13 MR. CRAIGUE: The guy was -- the guy had no place to live.
14 I met him at a job, I let him live in my basement. He said he
15 owned his own business. I tried to help him out.

16 MR. KELLY: Okay. So after his accidents, what changes did
17 you make at the company to ensure that this wouldn't happen
18 again? For example, did you purchase any fall protection
19 equipment; did you establish a fall protection program and train
20 the employees to recognize the hazards of falling? What changes
21 were actually made after he fell from there? What did you do?

22 MR. CRAIGUE: Well, obviously (inaudible) safer and we need
23 to work off ladders. I've always been a ladder guy, like you
24 have to work off ladders like. Because then there's no problem.

25 MR. KELLY: Okay. Did you -- so but did you look at the

1 fall protection to see if you -- that something else could be
2 done?

3 MR. CRAIGUE: Did I look at the fall --

4 MR. KELLY: Did you look at other means or whatever? I
5 mean, what did you do? What changes did you make after he fell?

6 MR. CRAIGUE: I didn't even know -- to be honest with you,
7 I didn't even know this is where it was until long after.

8 MR. KELLY: Yeah. But I mean, you did understand that he
9 fell?

10 MR. CRAIGUE: Yeah. Well, my understanding was that he
11 fell off -- he was on a ladder, he fell. I didn't know he was
12 on the roof. Like no one would tell -- they didn't tell me
13 anything. And --

14 MR. KELLY: But did you do anything else? Did you make any
15 changes?

16 MR. CRAIGUE: There's no changes made, just work off
17 ladders. I have all the fall gear available anytime to these
18 guys.

19 MR. KELLY: Okay. So did you realize as per your contract
20 you still needed perform work in areas where the employees had
21 to access the roof to perform the work, mainly on the south side
22 of the building? So again, we fall back to this side.

23 MR. CRAIGUE: Yep.

24 MR. KELLY: So if you look at that. Even if you're looking
25 at this one picture here, I mean, there's no way you could put a

1 ladder up here and reach all this. To do all this work, how is
2 it possible for them -- they can't do it on the ladder, Nath.
3 It's impossible for him to set a ladder and do all this work
4 that needs to be done. So how were they going to accomplish
5 this part? Do you see what I'm saying?

6 MR. CRAIGUE: Yeah.

7 MR. KELLY: How were they supposed to accomplish that?
8 Because that's still -- actually this still needed to be done.
9 How was this going to be done?

10 MR. CRAIGUE: They should have put some pump staging up
11 there.

12 MR. KELLY: Well, even if you'd have put the pump staging
13 out here, you'd have still been far away from it --

14 MR. CRAIGUE: And here, he could have had it, too.

15 MR. KELLY: Well, what else could have been used here
16 instead of nothing at all? What could we have done in here to
17 prevent Skinny from falling?

18 MR. CRAIGUE: Well, he's on a ladder.

19 MR. KELLY: But -- I know. But you still had -- he didn't
20 stand on the ladder while he did this work here, Nath. He only
21 used the ladder in areas he couldn't reach. This could be -- he
22 could stand on the roof and perform this work.

23 MR. CRAIGUE: Yeah.

24 MR. KELLY: So what else -- because he -- what could he
25 have done? What could you have done over here? Is there other

1 means that could have been done here?

2 MR. CRAIGUE: Put safety railings up here.

3 MR. KELLY: You mean temporary guard rails is what you're
4 talking about?

5 MR. CRAIGUE: Yeah.

6 MR. KELLY: Was there any reason why you didn't do that?

7 MR. CRAIGUE: There's no reason -- no, there should have
8 been. And they're right there next -- right next to it, you
9 know.

10 MR. KELLY: Okay. So is there any reason why he didn't put
11 up temporary railing? Is there any reason why --

12 MR. CRAIGUE: No, I don't know why --

13 MR. KELLY: -- fall protection wasn't used of some type?

14 MR. CRAIGUE: I don't know why. If whatever he asked for
15 from me, I would give him. Like --

16 MR. KELLY: Okay. So in the end here, as it got close to
17 the end, I understood -- I mean, again, through witness
18 statements and everything else. I know that you showed up while
19 they were working on here.

20 MR. CRAIGUE: Uh-huh.

21 MR. KELLY: So why didn't you, yourself, say hey, we had a
22 guy fall a month ago. You know, I can't take this, especially
23 with this many people watching or whatever happens, whatever
24 happens here, we can't take somebody else getting hurt.

25 MR. CRAIGUE: Yeah.

1 MR. KELLY: Why didn't you say, come off the roof and do
2 something? Why didn't you do that?

3 MR. CRAIGUE: I wish I did. I looked up to -- (inaudible)
4 ran his own show, you know.

5 MR. KELLY: Yeah. Sometimes you have to think for guys.
6 You have to -- even if they don't take themselves, you've got
7 to -- you know, especially as an owner. You have to try -- you
8 have to be on these guys. You have to watch them so close. And
9 I mean, there was -- you know?

10 All right. So 58, prior to this incident, were there any
11 other fall incidents in the past with the company where
12 individuals fell and were severely injured as a result of the
13 fall? I mean, I do understand that your dad fell.

14 MR. CRAIGUE: Yep.

15 MR. KELLY: But was there any other incidents where anyone
16 else fell on a job and suffered injuries?

17 MR. CRAIGUE: Skinny fell like 10, 12 years ago.

18 MR. KELLY: Okay. He fell. What happened then?

19 MR. CRAIGUE: I don't really remember.

20 MR. KELLY: Was he seriously injured where he had to go to
21 the hospital?

22 MR. CRAIGUE: He did go to the hospital.

23 MR. KELLY: Was it off a roof, off of scaffolding --

24 MR. CRAIGUE: No. It was a snow thing. It was --

25 MR. KELLY: He fell?

1 MR. CRAIGUE: He was on a ladder and he slipped on the
2 ladder. It was a long time ago.

3 MR. KELLY: So I heard of possibly another incident. Was
4 there an incident in 2016 where Skinny actually fell off a pump
5 jack here in Concord. They were working in White's over here --
6 White Park, here in Concord, where he was working on a pump
7 jack. Do you remember that? And he fell and split his head
8 open and had to go get stitches? Do you remember that?

9 MR. CRAIGUE: No.

10 MR. KELLY: You don't remember that?

11 MR. CRAIGUE: At White's Park?

12 MR. KELLY: White's Park, the little park over here in
13 town --

14 MR. CRAIGUE: Yeah, I know where that --

15 MR. KELLY: There was a house they were working on, they
16 were using the pump jack and they were on the pump jack and
17 apparently Skinny fell off of it and hit his head and split his
18 head open. You don't remember anything about that? No?

19 MR. CRAIGUE: No.

20 MR. KELLY: Okay. So I know it's been ten years ago you
21 said. Was that back when you guys were doing more roofs or
22 something like that?

23 MR. CRAIGUE: No. I don't really remember.

24 MR. KELLY: And he just fell and he was -- I guess he
25 wasn't wearing any fall protection --

1 MR. CRAIGUE: He was on a ladder -- this was a long time
2 ago.

3 MR. KELLY: Okay. So after Mr. Erickson was injured --
4 suffered his injury, was anyone else brought out to the job site
5 to help Mr. McKenny after his accident -- after Erickson's
6 accident in July 27? Was anybody else brought out there to try
7 to help Mr. McKenny?

8 MR. CRAIGUE: What do you mean help him?

9 MR. KELLY: I mean, was there another subcontractor brought
10 out to provide help or did he just always work by himself?

11 MR. CRAIGUE: He liked to work by himself, yeah.

12 MR. KELLY: So he was all alone, nobody else helped?

13 MR. CRAIGUE: No, I guess, yeah.

14 MR. KELLY: So I know you mentioned earlier, that you had
15 another subcontractor there. When did they come out and start
16 working?

17 MR. CRAIGUE: He helped me -- Shane would help me come and
18 throw some windows in, but that was really all he did.

19 MR. KELLY: Shane? Was it Shane himself or was it somebody
20 else that they hired?

21 MR. CRAIGUE: I don't know.

22 MR. KELLY: But they're not -- they're not your guys that
23 were there?

24 MR. CRAIGUE: No.

25 MR. KELLY: Because there was -- there were other guys

1 there working.

2 MR. CRAIGUE: Yeah, yeah, that's what I'm saying.

3 MR. KELLY: Somebody was driving the dump truck.

4 MR. CRAIGUE: Yeah.

5 MR. KELLY: They were hauling all the windows off.

6 MR. CRAIGUE: Yep.

7 MR. KELLY: So who were those guys?

8 MR. CRAIGUE: That was Shane helping me out.

9 MR. KELLY: So that was Shane's guys? Did he hire those
10 guys or where did those guys come from?

11 MR. CRAIGUE: Yeah.

12 MR. KELLY: So who -- what's the name of that company?

13 MR. CRAIGUE: SKS.

14 MR. KELLY: SKS?

15 MR. CRAIGUE: Yep.

16 MR. KELLY: Okay. And so that's somebody that Shane got
17 ahold of?

18 MR. CRAIGUE: Yeah. He just --

19 MR. KELLY: Do you know the owner? What's -- was the lead
20 guy there or somebody there?

21 MR. CRAIGUE: I don't --

22 MR. KELLY: But it's SKS, what, Corporation or just Inc or
23 just --

24 MR. CRAIGUE: Yeah.

25 MR. KELLY: And where are they out of, do you know by

1 chance?

2 MR. CRAIGUE: Concord, I think.

3 MR. KELLY: Concord? Okay. And what, he had, what, three
4 guys there working?

5 MR. CRAIGUE: Yeah.

6 MR. KELLY: And what exactly -- what were they doing? Were
7 they also helping pull out windows and that type stuff?

8 MR. CRAIGUE: Yeah.

9 MR. KELLY: Okay. So they were working as well. And they
10 were working along with Skinny?

11 MR. CRAIGUE: Yep.

12 MR. KELLY: Okay. And what about those guys? Did they --
13 how did they work? I mean, if they had to get up on -- if they
14 had to get -- so did these windows also have to come out?

15 MR. CRAIGUE: Uh-huh.

16 MR. KELLY: So -- okay, so who did that? Was that them or
17 Skinny that tried to pull those out?

18 MR. CRAIGUE: I would have to ask --

19 MR. KELLY: And how did they do that? Did they --

20 MR. CRAIGUE: I don't -- I wasn't there. I would have to
21 ask.

22 MR. KELLY: Okay. But it's SKS is the company that you
23 know, correct?

24 MR. CRAIGUE: Yeah.

25 MR. KELLY: Okay. You don't know how many -- how long did

1 they work on the job? Do you have any idea?

2 MR. CRAIGUE: If his guys were slow, (inaudible) guys for a
3 couple hours here and there to help me out.

4 MR. KELLY: Okay. And did this happen after Mr. Erickson
5 got hurt --

6 MR. CRAIGUE: No.

7 MR. KELLY: -- and that they needed to come in and help?

8 MR. CRAIGUE: No.

9 MR. KELLY: Or were they working there for a while?

10 MR. CRAIGUE: They were there here and there, off and on.

11 MR. KELLY: Okay. How often did REI's project manager,
12 Shane, show up at the job site? How often was he at the job
13 site?

14 MR. CRAIGUE: Every day. I think every morning.

15 MR. KELLY: He was there every day?

16 MR. CRAIGUE: Yeah.

17 MR. KELLY: Okay. So do you -- I mean, so he was there
18 every day. So did he ever call you and tell you that he made
19 any comments about safety on the job site? Did he ever give you
20 any comments that reflected safety?

21 MR. CRAIGUE: (No audible response.)

22 MR. KELLY: He never said, hey, you got guys over here --

23 MR. CRAIGUE: I don't know, he --

24 MR. KELLY: -- running up and down the roof, they don't
25 have no fall protection.

1 MR. CRAIGUE: Yeah, he probably would never -- he probably
2 didn't see it.

3 MR. KELLY: Yeah. Because I know he was on the job site
4 walking around.

5 MR. CRAIGUE: Yeah.

6 MR. KELLY: And he spent some time on the job site.

7 MR. CRAIGUE: Yeah.

8 MR. KELLY: But he never said anything?

9 MR. CRAIGUE: (No audible response.)

10 MR. KELLY: Never said anything to you?

11 MR. CRAIGUE: (No audible response.)

12 MR. KELLY: So when did the work on the south side actually
13 begin? When did this work begin? Do you remember the time
14 frame?

15 MR. CRAIGUE: I don't. It was at the end of the project.

16 MR. KELLY: So was it like the same week of Skinny's fall
17 or was it like a week before? Was it a couple weeks, one week,
18 can you give me some kind of ballpark?

19 MR. CRAIGUE: Probably a couple weeks I would say.

20 MR. KELLY: So a couple weeks before the fall? Or right
21 around the same time?

22 MR. CRAIGUE: Well, we did it in sections so probably a
23 couple weeks.

24 MR. GARDNER: That was a couple weeks before the fall you
25 said?

1 MR. CRAIGUE: When we started this?

2 MR. KELLY: Yeah, when you started that?

3 MR. CRAIGUE: I -- we could have stripped apart a month
4 before that to get a corner off it, so.

5 MR. KELLY: Yeah.

6 MR. CRAIGUE: Do you know what I mean?

7 MR. KELLY: But a good -- so in the last week -- let's say
8 on the day he got injured, did he work up here that whole week
9 then? The week of the 27th, August 27th? Was he working up
10 here every day trying to get that done then? Would that be a
11 fair statement or what?

12 MR. CRAIGUE: I don't know. We were working on that side
13 of the house (inaudible).

14 MR. KELLY: The south side. The south side of the
15 building?

16 MR. CRAIGUE: Yeah.

17 MR. KELLY: Okay. So was he -- Mr. McKenny actually -- I
18 know he had one day with Mr. Ford. But was there anyone else
19 helping him up there or was he just working by himself up until
20 Mr. Ford came?

21 MR. CRAIGUE: No, by himself.

22 MR. KELLY: He was working by himself? Okay.

23 MR. CRAIGUE: Unless there was someone there -- one of
24 Shane's guys there helping me with a window.

25 MR. KELLY: Okay. Well, I know -- and I'll be honest with

1 you Nate, I do know that there are people in this building right
2 here --

3 MR. CRAIGUE: Yeah.

4 MR. KELLY: -- they're all standing out -- they were coming
5 outside a lot. And they were saying they seen Kenny running up
6 and down this roof. They said he never had anything, ever
7 anything on the entire time he worked up there. And it was more
8 than one person who made that statement. So, I mean, it's like
9 every single day, he's not wearing anything.

10 MR. CRAIGUE: I -- I -- there are other things -- we
11 thought he was on a ladder, he should have had --

12 MR. KELLY: Yeah, but again, Nath, there's no way he
13 could -- you can't set up a ladder right here and perform that
14 work that needs to be done on these buildings, any of this
15 absolutely requires you to get on that roof --

16 MR. CRAIGUE: Yeah, I agree.

17 MR. KELLY: -- unless you have -- you know what I'm saying?
18 There's no way you could do that.

19 MR. CRAIGUE: With pump staging there with railings right
20 there, though --

21 MR. KELLY: If he had, but there was nothing there.

22 MR. CRAIGUE: I understand. I'm saying that's what we
23 should have -- that should have been done. That's all I'm -- I
24 said that before. I understand.

25 MR. KELLY: Okay. We're getting close to the end, I'm

1 sorry. So again, I have to ask you. Were you aware that
2 Mr. McKenny, in order to complete this phase of the work that he
3 had to do, were you aware that he actually had to be on the roof
4 to perform that work? Is that true? Did you know he had to be
5 up there to perform that work that's got to get done?

6 MR. CRAIGUE: Yeah.

7 MR. KELLY: Okay. All right. Same question. So why
8 wasn't there any safety features -- any safety procedures put in
9 place to protect him from falling off that roof?

10 MR. CRAIGUE: There could have been if he wanted. He -- he
11 ran the -- he told me what he wanted. If he wanted that there.
12 There should have been ladders there with a backing, right
13 there. I said that -- I've said that a whole bunch of times.
14 That we had pump jacks that should have gone right there.

15 MR. KELLY: Did you -- did you again, once again -- I mean,
16 I know it seems like I'm asking the same question. Did you say
17 anything to him? Did you say why don't you have fall protection
18 on or why don't you have railings? Why don't you have
19 something?

20 MR. CRAIGUE: I always -- I always say that to them. Are
21 you all set, do you need anything? Nope, I'm good.

22 MR. KELLY: Okay. Now -- and I know you mentioned the pump
23 jack system. So what is the pump jack system -- what was the
24 pump jack system used for on the job site and what dates was it
25 used? So we have -- maybe another picture of jacks, I don't

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1 know. I know I had a -- so the only thing I've got is this
2 right here, which is showing like -- we've seen the pump jack.
3 The pump jack was set up over here.

4 MR. CRAIGUE: Uh-huh.

5 MR. KELLY: So what were they using this pump jack for?

6 MR. CRAIGUE: What do you mean?

7 MR. KELLY: That's what I'm saying. What were they using
8 it for? Were they using it to put the siding on the roof or
9 something? Or what was -- what was it in use for, the pump
10 jack?

11 MR. CRAIGUE: To install siding.

12 MR. KELLY: To install siding. Okay. So who used -- who
13 was on this?

14 MR. CRAIGUE: The guys that were working.

15 MR. KELLY: So was it just Skinny or did Ford go up there
16 and help?

17 MR. CRAIGUE: No.

18 MR. KELLY: Ford didn't get up there? What about Mr.
19 Erickson, what about Christopher? Did both of them use the pump
20 jack?

21 MR. CRAIGUE: I'm not sure.

22 MR. KELLY: You don't know? But you know one of -- Skinny
23 did?

24 MR. CRAIGUE: Yeah, obviously, yeah.

25 MR. KELLY: Okay. Do you know when he used it? When was

1 the last time he used it?

2 MR. CRAIGUE: I don't know.

3 MR. KELLY: You don't know if it was the week that he got
4 injured?

5 MR. CRAIGUE: I don't know.

6 MR. KELLY: Okay. All right. Who would have assigned them
7 to work from the pump jack? And again, same thing. When was
8 the last day it was used? Do you remember the last time they
9 used it?

10 MR. CRAIGUE: I don't.

11 MR. KELLY: All right. Do you know -- would you assign
12 them to work from the pump jack?

13 MR. CRAIGUE: No.

14 MR. KELLY: Okay. Well, so if they didn't work from the
15 pump jack how would they complete their work if he wasn't able
16 to do that? If you told them -- if you told them they have to
17 go up there and -- they have to go up and do this work up here.

18 MR. CRAIGUE: Uh-huh.

19 MR. KELLY: All this work here. So if they didn't use the
20 pump jack, how else were they going to perform this work?

21 MR. CRAIGUE: Off ladders.

22 MR. KELLY: Okay. Do you know who made the pump jack? Do
23 you know the manufacturer?

24 MR. CRAIGUE: No.

25 MR. KELLY: You don't know -- okay. You don't know the

1 manufacturer, model, or what rated gauge the --

2 MR. CRAIGUE: No.

3 MR. KELLY: If it's a light, medium, or heavy gauge?

4 MR. CRAIGUE: I don't know.

5 MR. KELLY: Is that yours or his?

6 MR. CRAIGUE: Probably mine.

7 MR. KELLY: Probably yours?

8 MR. CRAIGUE: Uh-huh.

9 MR. KELLY: Okay. Is it -- it's set back. So is this
10 yours, but you don't know the model or anything on it?

11 MR. CRAIGUE: No, I don't.

12 MR. KELLY: But were the -- but they were using it to do
13 some work; is that correct?

14 MR. CRAIGUE: Of course they were.

15 MR. KELLY: Okay. Do you know how high up that pump jack
16 goes?

17 MR. CRAIGUE: It goes 24 feet. To the top of the pump jack
18 is 24. So they were probably working --

19 MR. KELLY: It's 24 feet, okay.

20 MR. CRAIGUE: Well, the pump jack is 24 feet. You can't go
21 that high with it.

22 MR. KELLY: Who would have set up the pump jack and who was
23 the competent person for the company? And how was this
24 individual trained and was there any documentation?

25 MR. CRAIGUE: There's no documentation. And Kenny and

1 Chris would put it up.

2 MR. KELLY: They would -- what about training? Was there
3 any training that those guys had on installing pump jacks or
4 scaffolding systems?

5 MR. CRAIGUE: Training? It's four nails. No.

6 MR. KELLY: So Kenny and Christopher would have been the
7 ones to set it up. All right. When working from the pump jack
8 system, do you know what -- when fall protection is required, at
9 what height required when you're working from that? When would
10 you have to have fall protection? At what height?

11 MR. CRAIGUE: I don't want to guess.

12 MR. KELLY: Well, I mean -- (inaudible). Okay. So would
13 fall -- fall protection is two --

14 MR. CRAIGUE: (Inaudible).

15 MR. KELLY: So with scaffolding systems, the height is ten
16 feet. So it's ten feet with scaffolding. But normal fall
17 protection is when it's over six foot for anything else. But
18 for scaffolding it's ten foot. So again, what type of fall
19 protection was used on the pump jack system when it was used?
20 What did they use?

21 Because, I mean, again, I end up doing my interviews and I
22 can base it only on interviews I've done. I understand that
23 they didn't have -- they didn't have anything. They were not
24 even wearing fall protection. They just went up and started
25 working.

1 MR. CRAIGUE: Yeah. There's a back to the --

2 MR. KELLY: But where is it? It wasn't used --

3 MR. CRAIGUE: (Inaudible).

4 MR. KELLY: Was it on the job site?

5 MR. CRAIGUE: Absolutely it was used.

6 MR. KELLY: So was it on the job site?

7 MR. CRAIGUE: Yeah. Absolutely.

8 MR. KELLY: Okay. Did you see them use it?

9 MR. CRAIGUE: That would not go up without it being on the
10 back of it. So yeah.

11 MR. KELLY: Okay.

12 MR. CRAIGUE: 100 percent that doesn't go up. You don't
13 work up there without the back of it.

14 MR. KELLY: Okay. But you just don't remember the last
15 time it was used then?

16 MR. CRAIGUE: No.

17 MR. KELLY: Okay. Well, I guess the final question here
18 is, you know, what do you think you could have done differently
19 to change the outcome? And what steps or procedures could you
20 have taken to prevent these incidents? What do you think you
21 could have done here?

22 MR. CRAIGUE: Yeah. This question goes through my mind
23 every night. I don't know. Him working off a ladder. Even if
24 I had this -- the railing system there, I still don't even know
25 how he doesn't get hurt falling off a ladder, you know.

1 MR. KELLY: Well, I mean, you know, these -- like I said.
2 You know you said you have used, you know, fall protection in
3 the past --

4 MR. CRAIGUE: Yeah.

5 MR. KELLY: You have used the railing. Even if we would
6 have had railing across here, it would have certainly kept him
7 falling off the roof. And then even with Christopher. Even if
8 there had been a body harness or a lanyard here --

9 MR. CRAIGUE: Yeah.

10 MR. KELLY: -- while he was working here. That would have
11 prevented that from happening. Do you know what I'm saying?

12 MR. CRAIGUE: Which we have. I don't know why he was doing
13 that. But back to this, he -- if he was on a ladder. I
14 understand what you're saying --

15 MR. KELLY: I mean, yeah, there's -- it's just --

16 MR. CRAIGUE: I'm not disagreeing with you.

17 MR. KELLY: I know. I mean, we're just talking about
18 how -- yeah, for instance, you were talking about with this
19 picture again, it shows that ladder is just -- I mean a lot of
20 this work, there's no way -- there's no way he could -- the
21 ladder would never reach because it's too far away. He would
22 absolutely have to be up in here putting all this on, changing
23 out all this.

24 There's no way he could have done that with a ladder on the
25 ground. Impossible. And I mean, we said that earlier. So he

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1 would -- if we would have had -- if there would have been guard
2 rails or could you set up -- did you have any scaffolding at all
3 that you could have set along here?

4 MR. CRAIGUE: Yeah.

5 MR. KELLY: Was there scaffolding on the job site?

6 MR. CRAIGUE: Well, what do you mean by scaffolding?

7 Like --

8 MR. KELLY: Well, just regular scaffolding. Just tube
9 scaffolding --

10 MR. CRAIGUE: No. No. I have no tube scaffolding.

11 MR. KELLY: Okay.

12 MR. CRAIGUE: What I would have done is put up the 12-foot
13 pump jacks with the railing here.

14 MR. KELLY: Have you done that in the past?

15 MR. CRAIGUE: Yes.

16 MR. KELLY: I mean, any reason why it wasn't done this
17 time?

18 MR. CRAIGUE: He didn't want -- I know he -- I know all the
19 decisions are on me, but it's a different type of working
20 relationship I had with him.

21 MR. KELLY: All right, well, have you got anything else you
22 want to say or?

23 MR. CRAIGUE: Like?

24 MR. KELLY: Well, I don't know. Just any other comments or
25 anything? You're more than welcome.

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1 MR. CRAIGUE: No. Just I'm not here to -- I'm just here
2 telling the truth. (Inaudible) I wasn't deceiving Mr. McKenna
3 or Mr. Erickson. They, you know --

4 MR. KELLY: Well, there are few other things like the way
5 the ladder was set up. So if you look at the ladder, roof
6 rackings are considered to be scaffolding standards. The fall
7 under OSHA scaffolding standards. So where this ladder was set
8 up, it was set up actually improperly because you can't just put
9 a ladder -- and extension ladder on plank boards. Because
10 number one, on a small scaffolding system, the feet of the
11 ladder have to be secured where they don't slip off or disengage
12 while somebody's climbing the ladder.

13 MR. CRAIGUE: There were nails in there, I believe, because
14 I remember taking them out.

15 MR. KELLY: Well, the bottom of the st -- the bottom of the
16 ladder.

17 MR. CRAIGUE: Uh-huh.

18 MR. KELLY: That needed to be secured. Now I'm not talking
19 about the plank boards.

20 MR. CRAIGUE: No, I'm talking about the ladder.

21 MR. KELLY: So you're say you nailed?

22 MR. CRAIGUE: I did not nail. I remember taking that stuff
23 down and then seeing nails there.

24 MR. KELLY: Yeah.

25 MR. CRAIGUE: For that, which would be impossible to see.

1 MR. KELLY: Yeah, well, see that's one item that does it.

2 So you got one that's got to be secured.

3 MR. CRAIGUE: Yeah.

4 MR. KELLY: The second one is see how small it is? It
5 can't be -- you can't use an extension ladder on a scaffolding
6 system to gain height. That's exactly what was going on here.
7 So this operation you couldn't do. You could never use any
8 scaffolding to gain height. For ladders on a scaffolding. So
9 that's what I'm telling you.

10 MR. CRAIGUE: So he's --

11 MR. KELLY: You couldn't do this. The ladder -- you had to
12 figure out a way to do this. You could build --

13 MR. CRAIGUE: We could have just --

14 MR. KELLY: You could have done another scaffolding system
15 up in here --

16 MR. CRAIGUE: To get to where he was we could have just
17 used a bigger ladder.

18 MR. KELLY: Or something that would reach here and that
19 would be set up correctly. But it's like I'm saying, the ladder
20 was not set up correctly because of this, okay?

21 MR. CRAIGUE: So if we used a 40 footer to get to that same
22 spot --

23 MR. KELLY: I don't know if you would have the right angle.

24 MR. CRAIGUE: Absolutely we would've. I tried it.

25 MR. KELLY: Okay. And then we also looked at this ladder.

1 So --

2 MR. CRAIGUE: Those are user backings of the scaffolding.

3 MR. KELLY: Well, yeah. But I talked to Ford on the day --

4 MR. CRAIGUE: Yeah.

5 MR. KELLY: I asked him how did you guys get on the roof?

6 How did he get up there? He was using this ladder as access to
7 the roof --

8 MR. CRAIGUE: No. There was -- those ladders were all
9 back -- not even made for that.

10 MR. KELLY: Well, that's what he told me that they -- he
11 took down. I asked Ford, I said, how did Skinny get on the
12 roof?

13 MR. CRAIGUE: Uh-huh.

14 MR. KELLY: He said that ladder right there. I said why is
15 it on the ground? He said, "When the rescue came I had to move
16 the ladder."

17 MR. CRAIGUE: Uh-huh.

18 MR. KELLY: So he told me this was the ladder that Skinny
19 used to get on the roof. So I mean, the ladder is there,
20 it's --

21 MR. CRAIGUE: I know it is.

22 MR. KELLY: -- damaged. It can't be used for -- it has to
23 be taken out of service.

24 MR. CRAIGUE: We're using it for the back of the staging.

25 MR. KELLY: Okay.

1 MR. CRAIGUE: There's no back.

2 MR. KELLY: But on that day, now, he did tell me that
3 Skinny used that ladder as access to the roof. That's exactly
4 what he said. And he told me that when the 911 guys came he
5 took this ladder down.

6 MR. CRAIGUE: Uh-huh.

7 MR. KELLY: So that ladder really needs to be destroyed or
8 taken out of service. It's in extremely bad shape.

9 MR. CRAIGUE: It wasn't meant for it to be a ladder, but I
10 understand.

11 MR. KELLY: I mean, it's just -- it's in rough condition.
12 All right. And do you know who this truck belongs to?

13 MR. CRAIGUE: Yeah. SKS.

14 MR. KELLY: SKS?

15 MR. CRAIGUE: Yep. I borrowed it from them.

16 MR. KELLY: Okay. That's their truck?

17 MR. CRAIGUE: Yep.

18 MR. KELLY: Does that have anything to do with Shane?

19 MR. CRAIGUE: That's his truck.

20 MR. KELLY: Is it his business?

21 MR. CRAIGUE: Yeah.

22 MR. KELLY: So SKS is Shane's business then?

23 MR. CRAIGUE: Yeah.

24 MR. KELLY: Okay. All right. And the guys working for him
25 are his folks?

1 MR. CRAIGUE: Yeah.

2 MR. KELLY: Okay. All right. Well, you have anything else
3 you want to say?

4 MR. CRAIGUE: No.

5 MR. KELLY: Okay.

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7 (END OF INTERVIEW.)

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